



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 12 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David A. Berg, President
American Crystal Sugar Company
101 North 3rd Street
Moorhead, Minnesota 56560

Re: Finding of Violation and Notice of Violation issued to American Crystal Sugar Company

Dear Mr. Berg:

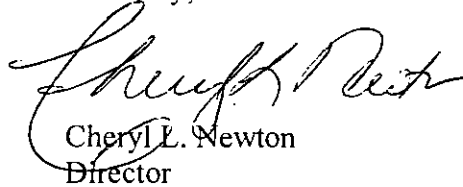
The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation and Notice of Violation (FOV/NOV) to American Crystal Sugar Company (ACSC). This FOV/NOV is issued in accordance with Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a).

EPA has determined that ACSC is violating the Prevention of Significant Deterioration (PSD) requirements under Section 165 of the CAA, 42 U.S.C. § 7475, the implementing regulations of Title V set forth at 40 C.F.R. Part 70, and the Minnesota State Implementation Plan at its facilities in Crookston, Moorhead, and East Grand Forks, Minnesota.

EPA is offering you an opportunity to confer with us about the violations cited in the FOV/NOV. The conference will give you an opportunity to present information on the specific findings in the FOV/NOV, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may contact Shannon Downey at (312) 353-2151 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton
Director

Air and Radiation Division

Enclosure

cc: Katie Koelfgen, Minnesota Pollution Control Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|--------------------------------|---|---------------------------------|
| IN THE MATTER OF: |) | FINDING OF VIOLATION and |
| |) | NOTICE OF VIOLATION |
| American Crystal Sugar Company |) | |
| Crookston, Minnesota |) | |
| |) | EPA-5-11-MN-06 |
| |) | |
| American Crystal Sugar Company |) | |
| Moorhead, Minnesota |) | |
| |) | |
| |) | |
| American Crystal Sugar Company |) | |
| East Grand Forks, Minnesota |) | |

FINDING OF VIOLATION AND NOTICE OF VIOLATION

The U.S. Environmental Protection Agency is issuing this Finding of Violation and Notice of Violation (FOV/NOV) to American Crystal Sugar Company (ACSC) for violations of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7401 *et seq.*, and the Minnesota State Implementation Program (SIP) at ACSC's sugar beet facilities in Crookston, Moorhead, and East Grand Forks, Minnesota.

This FOV/NOV is issued pursuant to Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (a)(3). The authority to issue this FOV/NOV has been delegated to the Regional Administrator of EPA, Region 5, and re-delegated to the Director, Air and Radiation Division, Region 5.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).
2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) necessary to protect the public health and welfare.
3. Pursuant to Sections 108 and 109 of the Act, 42 U.S.C. §§ 7408 and 7409, EPA has identified sulfur dioxide (SO₂), nitrogen dioxide (NO₂), a form of nitrogen oxides (NO_x),

particulate matter (PM), carbon dioxide (CO), and volatile organic compounds (VOCs) as criteria pollutants, and has promulgated NAAQS for such pollutants. 40 C.F.R. §§ 50.4 and 50.5; 40 C.F.R. § 50.11; 40 C.F.R. § 50.9 and 40 C.F.R. § 50.10.

4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant.

5. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the “PSD program.”

6. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility.

7. Pursuant to Section 169 of the CAA, 42 U.S.C. § 7479(1), a “major emitting facility” is defined to include any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated PSD pollutant.

8. Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP containing regulations implementing the PSD program as provided in the PSD provisions of the Act set forth at 42 U.S.C. §§ 7470-7492.

9. A state may comply with Sections 110(a)(2)(c) and 161 of the Act, 42 U.S.C. §§ 7410(a)(2)(c) and 7471, by having its own regulations approved by EPA, which must be at least as stringent as regulations set forth at 40 C.F.R. § 51.166.

10. Pursuant to 40 C.F.R. § 52.21(a), if a state does not have PSD regulations that EPA has approved and incorporated into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 into the SIP.

11. Pursuant to 40 C.F.R. § 52.23, any person failing to comply with an approved regulatory provision of a SIP is subject to an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413.

12. On August 7, 1980, EPA disapproved Minnesota's PSD program and incorporated the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Minnesota SIP at 40 C.F.R. § 52.1234. 45 Fed. Reg. 52741 (August 7, 1980), as amended at 53 Fed. Reg. 18985 (May 26, 1988). *See also* Minn. R. 7007.3000. EPA delegated to the Minnesota Pollution Control Agency the authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9580 (Jan. 29, 1981).

13. At all times relevant to this NOV/FOV, the applicable PSD regulations are the federal PSD provisions found at 40 C.F.R. §§ 52.21(b) through (w) then in effect.

14. The PSD regulations set forth in 40 C.F.R. § 52.21 apply to any major stationary source that intends to construct a "major modification" in an attainment or unclassifiable area. 40 C.F.R. § 52.21(i)(2).

15. Pursuant to 40 C.F.R. § 52.21(b)(1)(i)(b), a "major stationary source" is defined to include any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated PSD pollutant.

16. Pursuant to 40 C.F.R. § 52.21(b)(2)(i), a "major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a "significant net emission increase" of any regulated PSD pollutant.

17. Pursuant to 40 C.F.R. § 52.21(b)(3)(i), a "net emissions increase" means the amount by which the sum of the following exceeds zero: (1) any increase in emissions from a particular physical change or change in the method of operation at a stationary source; and (2) any other increases and decreases in emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

18. Pursuant to 40 C.F.R. § 52.21(b)(23)(i), a "significant" net emissions increase for SO₂, NO_x, and VOC means an increase in the rate of emissions that would each equal or exceed 40 tons per year.

19. Pursuant to 40 C.F.R. § 52.21(b)(23)(i), a "significant" net emissions increase for CO means an increase in the rate of emissions that would equal or exceed 100 tons per year.

20. Pursuant to 40 C.F.R. § 52.21(b)(23)(i), a "significant" net emissions increase for PM means an increase in the rate of emissions that would equal or exceed 25 tons per year.

21. Pursuant to 40 C.F.R. §§ 52.21(i)-(r), to construct a major modification in an attainment area, a major stationary source subject to the PSD program must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, obtain a PSD permit, and install and operate BACT control devices for each regulated PSD pollutant for which the modification would result in a significant net emissions increase.

22. BACT means an emissions limitation reflecting the maximum degree of reduction of each regulated PSD pollutant which the permitting authority determines is achievable for a

facility on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs. Section 169(3) of the CAA, 42 U.S.C. § 7479(3).

23. Pursuant to 40 C.F.R. § 52.21(i)(1), no major stationary source shall commence construction of a major modification without a PSD permit.

24. Pursuant to 40 C.F.R. § 52.21(r)(1), any owner or operator who constructs or operates a source or modification not in accordance with its PSD application or who commences construction without applying for and receiving an approved PSD permit shall be subject to an enforcement action.

25. Pursuant to 40 C.F.R. § 52.21(r)(4), when a particular source or modification becomes a major modification solely by virtue of a relaxation in any enforceable limitation on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of PSD shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Title V Requirements

26. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including major sources, commonly referred to as "Title V facilities."

27. The Title V permit program requires that each Title V permit include enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the CAA and the requirements of the applicable SIP. Applicable requirements include any applicable PSD requirements.

28. Pursuant to Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.5, every Title V operating permit is required to contain all applicable emission limitations, standards and requirements, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a SIP. *See also* Minn. R. 7007.0500.

29. Pursuant to Section 503 of the CAA, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), every owner or operator of a source subject to Title V, including major sources, is required to timely submit an accurate and complete Title V permit application, including information required to be submitted with the application. *See also* Minn. R. 7007.0200.

30. Pursuant to Section 501(2)(B) of the CAA, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, and Minn. R. 7007.0200, a "major source" is defined, in part, as any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant.

31. Pursuant to 40 C.F.R. § 70.1(b), Minn. R. 7007.0200, and Minn. R. 7007.0500 all sources subject to the Title V operating permit program, including major sources, shall

have a permit to operate that assures compliance by the source with all applicable requirements.

32. Pursuant to 40 C.F.R. § 70.2, an "applicable requirement" includes any standard or other requirement provided for in the applicable SIP approved or promulgated by EPA that implements the relevant requirements of the CAA, including any SIP revisions. *See also* Minn. R. 7007.0500.

33. 40 C.F.R. § 70.5(a)(2) defines "complete application" to include information that is "sufficient to evaluate the subject source and its application and to determine all applicable requirements." *See also* Minn. R. 7007.0500.

34. Pursuant to 40 C.F.R. § 70.5, an applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. *See also* Minn. R. 7007.1150.

35. EPA approved Minnesota's Title V operating program on an interim basis on June 16, 1995, and fully approved the program on December 1, 2001. 60 *Fed. Reg.* 31637 and 66 *Fed. Reg.* 62967. Minnesota's Title V operating permit program regulations are codified at Minnesota Rule 7007, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

B. FACTUAL BACKGROUND

36. ACSC is a corporation authorized to do business in Minnesota.

37. ACSC is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

38. At all times relevant to this FOV/NOV, ACSC was the owner and/or operator of facilities at Crookston, Moorhead, and East Grand Forks, Minnesota (hereinafter "Crookston," "Moorhead," and "East Grand Forks").

39. Crookston, Moorhead, and East Grand Forks are agricultural processes that produce sugar from sugarbeets.

40. Crookston and East Grand Forks are located in Polk County, and Moorhead is located in Clay County, Minnesota. At all times relevant to the violations cited in this FOV/NOV these counties have been classified as attainment for SO₂, NO_x, PM, CO, and VOC.

41. Crookston, Moorhead and East Grand Forks each constitute a "major emitting facility" within the meaning of Section 169 of the CAA, 42 U.S.C. § 7479(1).

42. Crookston, Moorhead, and East Grand Forks are “major sources” as defined by Section 501(2)(B) of the CAA, 42 U.S.C. § 7661(2)(B), and Minn. R. 7007.0200, as well as by Title V, Section 501(2)(B) of the CAA, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, and Minn. R. 7007.0200.

43. Crookston, Moorhead, and East Grand Forks are subject to Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, and Minn. Rule 7007.

a. East Grand Forks

44. In 1985, ACSC installed Pulp Dryer C at East Grand Forks.

45. Prior to 1997, ACSC had various synthetic minor limits in its permits that limited production at East Grand Forks.

46. In 1997, ACSC made modifications to its pulp presses, diffusers and eliminated its operating limits at East Grand Forks.

47. The modifications to the pulp press and the diffuser and the relaxation of its operating limits in 1997 allowed East Grand Forks to increase production using existing capacity.

b. Crookston

48. In 1985, ACSC constructed the pellet cooler at Crookston.

49. At the time of the 1985 pellet cooler construction, ACSC took an operating hour restriction of 5,110 hours in order to have the modification considered minor under the PSD regulations.

50. In 1993, ACSC modified the sugar dryer, sugar cooler, and lime kiln at Crookston.

51. At the time of the 1993 modifications at Crookston, ACSC took an operating hour restriction of 6,000 hours in order to have the modifications considered minor under the PSD regulations.

52. In 1995, ACSC requested and the Minnesota Pollution Control Agency (MPCA) granted a relaxation of the operating hour limits on its pellet cooler from 5,110 hours to 6,000 hours at Crookston.

53. In 1998, ACSC requested and MPCA granted a relaxation of the operating hour limits on its pellet cooler, sugar dryer, lime kiln and sugar cooler from 6,000 hours to 6,400 hours at Crookston.

54. In 1999, ACSC requested and MPCA granted an elimination of operating hour limitations on all of its emission units, allowing 8,760 hours of operation at Crookston.

55. These relaxations of hourly operating limits in 1995, 1998, and 1999 allowed Crookston to increase production using existing capacity.

c. Moorhead

56. In 1983, ACSC constructed a sugar cooler and sugar dryer at Moorhead.

57. At the time of the 1983 construction, ACSC took an operating hour restriction of 5,110 hours for the cooler, sugar dryer and lime kiln in order to have the project considered a minor modification under the PSD regulations.

58. In 1984, ACSC constructed a pellet cooler at Moorhead.

59. At the time of the 1984 pellet cooler construction, ACSC took an operating hour restriction of 5,110 hours for the pellet cooler in order to have the project considered a minor modification under the PSD regulations.

60. In 1995, ACSC requested and MPCA granted a relaxation of the operating hour limits on its pellet cooler, sugar dryer, sugar cooler from 5,110 to 6,000 hours at Moorhead.

61. In 1999, ACSC requested and MPCA granted an elimination of the operating hour limitations on its sugar dryer, sugar cooler, and pellet cooler, allowing 8,760 hours of operation at all emission units at Moorhead.

62. These relaxations of hourly operating limits in 1995 and 1999 allowed Moorhead to increase production using existing capacity.

C. FINDING AND NOTICE OF VIOLATION

a. East Grand Forks

1. PSD Violations

Operating Hour Limit Relaxation

63. The modifications and elimination of operating limits described above at East Grand Forks constitutes a major modification, as that term is defined at 40 C.F.R. § 52.21(b)(2)(i). *See also* 40 C.F.R. § 52.21(r)(4).

64. The 1997 project at East Grand Forks caused a significant net emissions increase of SO₂, NO_x, and PM from Boilers 1 and 2, and VOC and CO from Pulp Dryers A, B and C, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i).

65. ACSC failed to apply for and obtain a complete and accurate PSD permit for the 1997 modifications and elimination of operating limits at East Grand Forks.

66. Before modifying and eliminating the operating limits, ACSC failed to install and operate pollution control equipment reflecting the application of BACT for VOC and CO on Pulp Dryers A, B, and C's emissions, and SO₂, NO_x, and PM on the two coal fired boilers' emissions at East Grand Forks.

67. ACSC violated and continues to violate Section 165 of the CAA, 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(i), (j), (k), and (r), by commencing construction of and continuing to operate a major modification at East Grand Forks without first applying for and obtaining the required pre-construction PSD permit, conducting a BACT analysis, and installing and operating BACT-level controls on the VOC and CO emissions from its Pulp Dryers A, B, and C, and SO₂, NO_x, and PM emissions on its Boilers 1 and 2.

1985 Construction of Pulp Dryer C

68. ACSC's construction and installation of Pulp Dryer C at East Grand Forks constituted a major modification, as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

69. The Pulp Dryer C installation at East Grand Forks caused a significant net emissions increase of VOC and CO from the pulp dryers as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i).

70. ACSC failed to apply for and obtain a complete and accurate PSD permit for the 1985 construction and operation of Pulp Dryer C at East Grand Forks.

71. Before constructing Pulp Dryer C, ACSC failed to install and operate pollution control equipment reflecting the application of BACT for VOC and CO on Pulp Dryer C's emissions at East Grand Forks.

72. ACSC violated and continues to violate Section 165 of the CAA, 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(i), (j), (k), and (r), by commencing construction of, and continuing to operate, a major modification at East Grand Forks without first applying for and obtaining the required pre-construction PSD permit, conducting a BACT analysis, and installing and operating BACT-level controls on the VOC and CO emissions from Pulp Dryer C.

2. Title V Violations

1999 Operating Hour Limit Relaxation to 8,760 Hours

73. As set forth above, ACSC undertook a major modification of its Pulp Dryers A, B, and C at East Grand Forks, which subjected the pulp dryers to the PSD program.

74. As set forth above, ACSC undertook a major modification to Boilers 1 and 2 at East Grand Forks, allowing it to increase production using existing capacity, which subjected the boilers to the PSD program.

75. ACSC failed to include complete and accurate information pertaining to this modification in its Title V permit application for East Grand Forks, including failing to cite to and describe the requirement to apply/install BACT for Dryers A, B, and Cs' VOC and CO emissions.

76. ACSC failed to include in its Title V permit for East Grand Forks information pertaining to the modification, and failed to cite to and describe the requirement to apply/install BACT for Boilers 1 and 2s', SO₂, NO_x, and PM emissions.

77. ACSC violated and continues to violate, Sections 503 and 504 of the CAA, 42 U.S.C. §§ 7661b, and 7661c, 40 C.F.R. §§ 70.1(b) and 70.5, and the Title V provisions of the Minnesota SIP set forth at Minn. R. 7007.0200, 7007.0500, and 7007.1150, by failing to submit an accurate, and complete Title V permit application for East Grand Forks with information concerning all applicable requirements, and by failing to supplement, correct, or update its East Grand Forks Title V permit application to identify all applicable requirements.

1985 Construction of Pulp Dryer C

78. As set forth above, ACSC undertook a major modification by constructing Dryer C at East Grand Forks, which subjected Pulp Dryer C to the PSD program.

79. ACSC failed to include in its Title V permit for East Grand Forks information pertaining to the modification and failed to cite to and describe the requirement to apply/install BACT for Dryer C's VOC and CO emissions.

80. ACSC violated and continues to violate Sections 503 and 504 of the CAA, 42 U.S.C. §§ 7661b, and 7661c, 40 C.F.R. §§ 70.1(b) and 70.5, and the Title V provisions of the Minnesota SIP set forth at Minn. R. 7007.0200, 7007.0500, and 7007.1150, by failing to submit an accurate and complete Title V permit application for East Grand Forks with information concerning all applicable requirements, and by failing to supplement, correct, or update its East Grand Forks Title V permit application to identify all applicable requirements.

b. Crookston

1. PSD Violations

81. The projects described above, in paragraphs 48 – 55, at Crookston constituted a major modification, as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

82. The projects described at Crookston caused a significant net emissions increase of SO₂, NO_x, PM, from its boilers, and VOC and CO from its pulp dryers, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i).

83. ACSC failed to apply for and obtain a complete and accurate PSD permit for the 1995, 1998, and 1999 operating hour limit relaxations at Crookston.

84. Before modifying and eliminating the operating limits, ACSC failed to install and operate pollution control equipment reflecting the application of BACT for SO₂, NO_x, and PM, on the boilers' emissions, and VOC and CO on the pulp dryers' emissions at Crookston.

85. ACSC violated and continues to violate Section 165 of the CAA, 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(i), (j), (k), and (r), by commencing construction of and continuing to operate a major modification at Crookston without first applying for and obtaining the required pre-construction PSD permit, conducting a BACT analysis, and installing and operating BACT-level controls on the SO₂, NO_x, and PM, emissions from the boilers, and VOC and CO emissions from its pulp dryers.

2. Title V Violations

86. As set forth above, ACSC undertook a major modification to its North and South pulp dryers, and Boilers 1, 2, and 3 at Crookston, which subjected the pulp dryers and boilers to the PSD program.

87. ACSC failed to include complete and accurate information pertaining to this modification in its Title V permit application for Crookston including failing to cite to and describe the requirement to apply/install BACT for the North and South pulp dryers' VOC and CO emissions.

88. ACSC violated and continues to violate Sections 503 and 504 of the CAA, 42 U.S.C. §§ 7661b, and 7661c, 40 C.F.R. §§ 70.1(b) and 70.5, and the Title V provisions of the Minnesota SIP set forth at Minn. R. 7007.0200, 7007.0500, and 7007.1150, by failing to submit a complete and accurate Title V permit application for Crookston with information concerning all applicable requirements, and by failing to supplement, correct, or update its Crookston Title V permit application to identify all applicable requirements.

c. Moorhead

1. PSD Violations

89. The projects described at Moorhead constituted a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

90. The projects described above at Moorhead caused a significant net emissions increase of SO₂, NO_x, PM, from the boilers, VOC from the pulp dryers, and CO from the South Pulp Dryer, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i).

91. ACSC failed to apply for and obtain an accurate and complete PSD permit for the 1999 operating hour limit relaxation at Moorhead.

92. Before increasing the operating hours, ACSC failed to install and operate pollution control equipment reflecting the application of BACT for SO₂, NO_x, and PM, on the boilers’ emissions, and VOC on both dryers’ emissions, and CO on the South pulp dryer’s emissions at Moorhead.

93. ACSC violated and continues to violate Section 165 of the CAA, 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(i), (j), (k), and (r), by commencing construction of and continuing to operate a major modification at Moorhead without first applying for and obtaining the required pre-construction PSD permit, conducting a BACT analysis, and installing and operating BACT-level controls on the SO₂, NO_x, and PM emissions from the boilers, and VOC emissions from its pulp dryers and CO emissions from the South pulp dryer.

2. Title V Violations

94. As set forth above ACSC undertook a major modification at Moorhead, which subjected the North and South pulp dryers to the PSD program.

95. As set above, ACSC undertook a major modification at Moorhead, which subjected the boilers to the PSD program.

96. ACSC failed to include complete and accurate information pertaining to this modification in its Title V permit application for Moorhead, including failing to cite to and describe the requirement to apply/install BACT for the North and South pulp dryer VOC emissions as well as the requirement to apply/install BACT for Boilers 1, 2, and 3s’ SO₂ and NO_x emissions.

97. ACSC violated and continues to violate Sections 503 and 504 of the CAA, 42 U.S.C. §§ 7661b, and 7661c, 40 C.F.R. §§ 70.1(b) and 70.5, and the Title V provisions of the Minnesota SIP set forth at Minn. R. 7007.0200, 7007.0500, and 7007.1150, by failing to submit an accurate and complete Title V permit application for the Moorhead facility with information concerning all applicable requirements, and by failing to supplement,

correct, or update its Moorhead Title V permit application to identify all applicable requirements.

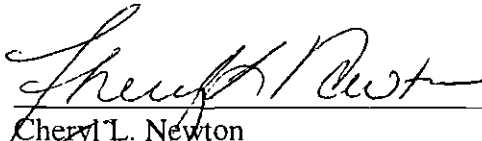
D. ENFORCEMENT

98. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

99. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule promulgated under Title V of the CAA, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. EFFECTIVE DATE

Dated: 8/12/11


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING


I, Betty Williams, certify that I sent a Finding of Violation/Notice of Violation,
No. **EPA-5-11-MN-06**, by Certified Mail, Return Receipt Requested, to:

David A. Berg, President
American Crystal Sugar Company
101 N 3rd St
Moorhead, Minnesota 56560

I also certify that I sent a copy of the Notice of Violation by first class mail to:

Katie Koelfgen
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155-4194

On the 15th day of August, 2011


Betty Williams
Administrative Program Assistant
Planning and Administrative Section

Certified Mail Receipt Number: 70091680 00007672 7662